

**PERSONAL SERVICE CONTRACT**  
**UNDER STATE TERM SCHEDULE NUMBER 533153-0**

**Secretary of State Contract Number 06-322**

This Agreement is between the **Office of the Ohio Secretary of State** (hereinafter the "Secretary"), located at 180 E. Broad Street, 16th Floor, Columbus, Ohio 43215, and **GovTech Solutions, L.L.C.**, with offices at Summit of Richfield II, 3046 Brecksville Road, Richfield, Ohio 44286 (hereinafter "Contractor") (Secretary and Contractor each referred to herein as a "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS, the Secretary currently maintains the Ohio Secretary of State Web site; however, the current site was recently redesigned to improve external (constituent) user experience, the Secretary now seeks to implement processing and usability efficiencies for internal (employee) users:

WHEREAS, Secretary wishes to improve processing and usability of the application through introduction of methodologies and policies as well as tools and technology designed to aid in content management through standardized processes and procedures as well as obtain software that meets the Secretary's newly defined enterprise architecture.

WHEREAS, Secretary wishes to retain the services of Contractor to perform certain planning, design, development and implementation related services, including, providing process and technical services in connection with the implementation of tools and technology to provide increased efficiencies within the Public Affairs and Information Technology (IT) departments.

WHEREAS, the approach for these services and software entails a five (5) step project ("Project Steps");

WHEREAS, this Contract addresses all five steps of the proposed solution;

WHEREAS, upon completion of the work defined in Article II and Article III below, the Secretary and Contractor may choose to enter into another contract for any recognized continuing enhancements;

WHEREAS, Contractor wishes to provide the Secretary with such services; and,

THEREFORE, the parties, for good and valuable consideration and based on the mutual promises recited herein, do agree as follows:

## **Article I. STATE TERM SCHEDULE**

**1.01** This Statement of Work (“SOW”) is entered into under the authority of State Term Schedule **533153-0** (the “STS”) and incorporates by reference the Terms & Conditions of the STS.

## **Article II. DEFINITIONS**

**2.01** **“Acceptance” or “Accepted”** when used in this Agreement means signoff by the Secretary for Contractor’s completion of the planning, design, customization development and implementation of the content management software.

**2.02** **“Analysis”** shall mean the examination and documentation of the current Web site user tools and architecture, or “as-is” model for the purpose of determining requirements for the “to-be” model.

**2.03** **“Approach”** shall mean the process that will be followed in order to initiate, execute and complete the project.

**2.04** **“Close Out”** shall mean the completion of the project.

**2.05** **“Design”** shall mean the creation of the “to-be” model. It is anticipated that the design will include the use of WebSAT™ for content management; however, findings during the Planning step could result in a change of direction.

**2.06** **“Development” or “Develop”** shall mean the customization of the content management tool to meet the Secretary’s needs.

**2.07** **“Deliverables”** shall mean the tangible items to be provided as a result of this project and includes such things as documentation and training.

**2.08** **“Implementation” or “Implement”** shall mean the completion of development customization and installation of a content management tool and the adoption of standardized procedures for managing content.

**2.09** **“Knowledge Transfer”** shall mean the provision of an ample level of understanding of the system conveyed to Secretary’s Public Affairs and Information Technology staff in order that they can install, maintain and modify the software as deployed by Contractor.

**2.10** **“Patches”** shall refer to corrections to the software that are made by Contractor in response to errors found in the code.

**2.11** **“Planning”** shall mean the initial step during which Contractor performs basic research, in consultation with the Secretary, to establish the information base for the customization of the content management tool and identification of

standardized procedures for consideration in the end design.

**2.12** “Project” shall mean the undertaking by Contractor to work with the Secretary to plan, design, develop and implement methodologies and policies as well as tools and technology to provide increased efficiencies within the Public Affairs and Information Technology (IT) departments for the Secretary.

**2.13** “**Project Steps**” shall mean the specific steps that have been proposed to complete the project and include:

- a) Step 1 – Planning;
- b) Step 2 – Analysis;
- c) Step 3 – Design;
- d) Step 4 – Implementation;
- e) Step 5 – Close-out.

**2.14** “Project Team” shall consist of the following areas of expertise:

- a) Secretary's Executive Staff;
- b) Secretary's Subject Matter Experts from IT;
- c) Secretary's Subject Matter Experts from Public Affairs;
- d) Secretary's Project Manager;
- e) Contractor's Developers;
- f) Contractor's Research Analyst;
- g) Contractor's Project Manager.

**2.15** “Software” shall mean the application and all components necessary to operate the application in the Secretary’s existing environment.

**2.16** “User Interface” shall mean the pages used by an internal (Secretary’s employee(s)) user of the content management tool.

2.17 “Web Site” shall mean the externally accessible set of inter-linked Web pages currently located at <http://www.sos.state.oh.us/>.

### Article III. SCOPE OF WORK

**3.01** “Engagement” Secretary hereby retains Contractor to plan, design, develop and implement methodologies and policies as well as tools and technology (as further described in this Article) for the Secretary, effective as of the Effective Date defined in Article IV, and Contractor hereby accepts such retention by Secretary.

**3.02 “Acceptance of Engagement”** Contractor will complete the Project and deliver the Components as described in the Specifications.

**3.03 "Project Activities"** During the course of this project, Contractor shall engage in

the following activities:

- (a) Planning
  - i. Identify stakeholders
  - ii. Identify project goals
  - iii. Identify existing tools and technology standards analysis documents
  - iv. Review existing tools and technology standards analysis documents
  - v. Determine project scope
  - vi. Create project charter
  - vii. Kickoff meeting
- (b) Analysis
  - i. Identify requirements
    - 1. Design requirements
    - 2. User requirements
    - 3. Navigability requirements
    - 4. Accessibility requirements
  - ii. Identify typical user use cases
  - iii. Document full as-is model
  - iv. Determine existing enterprise architecture
- (c) Design
  - i. Document user interface standards
  - ii. Design user navigation
  - iii. Design architecture
- (d) Development and Implementation
  - i. Setup development environment
  - ii. Setup QA environment
  - iii. Complete development
  - iv. Conduct testing and make bug fixes
  - v. Implement
- (e) Closeout
  - i. Create SOS standards document
  - ii. Create application documentation
  - iii. Conduct knowledge transfer and application documentation review

**3.04 “Project Deliverables” include:**

- a) Project scope document from Planning step;
- b) Design documents from Design step;
- c) Software from Development and Implementation step;
- d) System documentation to allow for ongoing support by the Secretary’s Public Affairs and Information Technology staff;
- e) Knowledge transfer from Contractor to Secretary’s Public Affairs and Information Technology staff to allow for ongoing support by Secretary’s staff;

- f) Thirty (30) day maintenance agreement following implementation during which the Secretary's staff may contact the Contractor with questions regarding the project deliverables.

**3.05 "Implementation Parameters"** Contractor shall develop the software with the following parameters such that the application will:

- a) Meet the expectations of typical internal users and will not require any additional commercial off-the-shelf software installation by the Secretary in order to utilize the solutions provided;
- b) Comply with all requirements of the Secretary's newly defined enterprise architecture standards;
- c) Be based on industry standards and best practices for software design, development and implementation.

**3.06** Content migration to the new Web site will be the responsibility of the Secretary's Information Technology and/or Public Affairs staff. Contractor will provide support in a mutually agreed upon capacity.

**3.07** Contractor shall provide weekly status reports to Secretary.

**3.08** Contractor shall provide patches for newly developed software to Secretary in a timely manner. In addition, Contractor shall make known to the Secretary the release of new versions of the software in a timely manner.

**3.09** The Contractor will grant the Secretary a worldwide, non-exclusive, royalty-free license to use, modify, sell, and otherwise, distribute all pre-existing materials that are incorporated in any custom developed deliverable.

**3.10** Contractor shall provide the above stated services through Contractor's designated representative as requested and approved by the Secretary.

#### **Article IV. TERM**

**4.01** This Agreement is effective as of the 18th day of July 2005. This Agreement will automatically expire on September 30, 2005. Unless this agreement is terminated or expires without renewal, it will remain in effect until the Services are completed to the satisfaction of the Secretary and Contractor is paid. Satisfaction of the Secretary shall be judged on a reasonable standard. The current General Assembly cannot commit a future General Assembly to expenditures. The Secretary, however, may renew this agreement in the next biennium by issuing written notice to Contractor of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Services continues.

**4.02** Timeliness of Performance. Contractor understands that prompt performance of

all services hereunder is required by Secretary in order to meet its schedules and commitments. In the event that any anticipated or actual delays in meeting Secretary's deadlines or scheduled completion dates are caused by the unacceptable performance of any Contractor employee or any other cause within the reasonable control of Contractor, Contractor shall provide additional temporary personnel, as requested by Secretary and at no charge to Secretary, in order to complete the assignment involved in a timely manner. Neither party, however, shall be responsible for any delays that are not due to such party's fault or negligence or that could not have reasonably been foreseen or provided against.

## Article V. COMPENSATION

**5.01** In consideration for the promises and performance of Contractor as set forth herein, the Secretary agrees to:

- a) Pay Contractor upon delivery and installation of the new content management software.
- b) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article III exceed **ONE HUNDRED AND FORTY-FIVE THOUSAND DOLLARS AND 00/100 CENTS (\$145,000.00)**.

**5.02** Upon delivery and installation of the new software, Contractor shall provide an appropriately detailed and accurate invoice containing hourly rates and number of hours for services performed.

**5.03** An invoice is not proper if it contains a defect or impropriety. A proper invoice shall include, but is not limited to, the identification of a purchase number, the date of service and the service provided. The Secretary shall notify Contractor within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to correct the defect or impropriety.

**5.04** Contractor shall submit Invoice for review and approval to the following location:

Secretary of State of Ohio  
Attn: Dilip C. Mehta, Chief Financial Officer  
PO Box 16366  
Columbus, Ohio 43216

**5.05** Section 126.30 of the Ohio Revised Code is applicable to this agreement and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month that equals one twelfth of the rate per annum prescribed in Section 5703.47 of the Ohio Revised Code.

**5.06** Unless expressly provided for elsewhere in this agreement, Contractor shall be responsible for and assume all office and business expenses that are incurred as a

result of the performance of this Agreement.

**5.07** The Secretary is exempt from any sales, use, excise and property tax. To the extent sales, use, excise or any similar tax is imposed on Contractor in connection with the Services, such will be the sole and exclusive responsibility of Contractor, and Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

**Article VI. CERTIFICATION OF FUNDS**

**6.01** It is expressly understood by the parties that none of the rights, duties or obligations described in this Agreement shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07 of the Ohio Revised Code, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state agencies, and when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that federal funds are used, until such time that the Secretary gives the Contractor written notice that such funds have been made available to the Secretary, by the Secretary's funding source.

**Article VII. RELATED CONTRACTS**

**7.01** The Contractor shall not enter into other subcontracts for work required to be performed under this Contract without prior written approval by the Secretary. All work subcontracted shall be at the expense of the Contractor.

**Article VIII. CONFLICTS OF INTEREST**

**8.01** No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

**8.02** Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Secretary in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Secretary shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

**Article IX.****RIGHTS, IN DATA, PATENTS AND COPYRIGHTS -  
PUBLIC USE**

**9.01** To the extent the Services performed by Contractor under this Agreement result in the creation of a tangible Deliverable(s) and/or Report(s), or the Deliverable(s) and/or Report(s) otherwise constitutes an intellectual property right, the Services shall be deemed a “**work made for hire**” as that term is defined under U.S. Copyright Law, and the Deliverables and/or Property developed pursuant to the terms of this Agreement are the sole and exclusive property of Secretary and may be used by it and its subsidiaries and Affiliates in any manner they choose.

**9.02** Title to the Deliverables and/or Property and all applicable rights to copyrights, patents, trade secrets and all other property rights inherent in such Deliverables and/or Property or appurtenant thereto are, shall be and shall remain exclusively in Secretary, and neither Contractor nor its employees shall have any property interest in the Deliverables and/or Property, which are hereby irrevocably recognized by Contractor to belong exclusively to Secretary. Contractor shall have no right to use, license, convey or otherwise transfer the Deliverables and/or Property, to a third party. Unless pursuant to the terms of this Agreement and/or any applicable Schedule(s), Contractor shall have no right to retain copies of such Deliverables and/or Property for any reason, and shall return all such Deliverables and/or Property to Secretary upon Secretary’s request.

**9.03** In the event that none or only a part of the Deliverables and/or Property qualify as a “work made for hire”, Contractor agrees to and does hereby assign any and all rights it may have to the copyrights, patents, trade secrets and all other property rights inherent in such Deliverables and/or Property or appurtenant thereto under the applicable law to Secretary, and Contractor agrees to cooperate with the Secretary and execute any documents deemed necessary by Secretary to effectuate such an assignment and perfection of the Secretary’s rights in such Deliverables and/or Property without additional cost to Secretary.

**9.04** Neither the Contractor nor any of the Contractor’s employees, agents, subcontractors or assignees shall make a disclosure for the purpose of securing a patent or other proprietary interest in the United States or any other country for any of the Deliverables unless such disclosure is approved in writing by the Secretary prior to application for the patent. In the event that such patent or other proprietary interest is obtained, the Contractor shall, at the request of the Secretary, provide the Secretary written or electronic authorization for the Secretary and any other person, agency, or instrumentality contributing financial support to the work contemplated hereunder to make use of the subject of the said patent or other proprietary interest disclosure without payment thereof.

**9.05** Contractor acknowledges that the Secretary may make any Deliverables freely available to the general public.

**9.06** The Contractor will grant the Secretary a worldwide, non-exclusive, royalty-free license to use, modify, sell, and otherwise, distribute all pre-existing materials that are incorporated in any custom developed deliverable.

## **Article X. CONFIDENTIALITY**

**10.01** The Secretary may disclose to the Contractor written material or oral or other information that the Secretary treats as confidential (“Confidential Information”). Title to the Confidential Information and all related materials and documentation the Secretary deliverers to the Contractor will remain with the Secretary. The Contractor agrees to treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the Secretary, or individuals or organizations about whom the Secretary keeps information. By way of example and by no means by way of limitation, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. Such also includes police and investigative records, files containing personal information about individuals or employees of the Secretary, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

**10.02** The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to do the Services. The Contractor will restrict circulation of Confidential Information within its organization and then only to people in the Contractor’s organization that have a need to know the Confidential Information to do the Services. The Contractor will be liable for the disclosure of such information whether the disclosure is intentional, negligent or accidental, unless otherwise provided below.

**10.03** The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor’s exercise of at least the same degree of care as it normally takes to preserve and safeguard its own secrets, except when the Contractor’s procedures are not reasonable given the nature of the Confidential Information or where the disclosure nevertheless results in liability to the Secretary.

**10.04** Subject to Article XIII, Suspension and Termination, of this agreement, the Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor will

cause or have caused all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating obligations the same as those in this Article.

**10.05** The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession prior to disclosure by the Secretary, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Agreement; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the Secretary; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor: (a) notifies the Secretary of such order immediately upon receipt of the order, and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement

**10.06** The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to the requirements of this Article.

## **Article XI. USE IN ADVERTISING OR MARKETING MATERIAL**

**11.01** The Contractor shall not identify, without prior written or electronic approval, the Secretary in any of the Contractor's advertising or marketing material, sales presentations, or scholarly papers or presentations.

## **Article XII. WARRANTIES**

Contractor hereby warrants and represents to Secretary as follows:

**12.01** Each of Contractor's employees assigned to perform services under this Contract shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be performed in accordance with this Contract.

**12.02** Secretary shall receive free, good and clear title to all materials, deliverables and products developed under this Contract.

**12.03** Contractor warrants that, in performing the Services under the Agreement: (i) Contractor will comply with the descriptions and representations as to the Services (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements) set forth in this Agreement or any Exhibit hereto; (ii) render

Services in a workmanlike manner consistent with the standards in the industry using appropriately trained personnel; and (iii) the Services will not be in violations of any applicable law, rule or regulation, and Contractor will have obtained all permits required to comply with such laws and regulations.

**12.04** If Secretary provides written notice to Contractor that any of the Services specified in this Agreement were rendered in an un-workmanlike manner, or otherwise were not in accordance with the requirements set forth in this Agreement or any Schedule hereto, at Secretary's option Contractor will, to the extent any such deficiencies are identified, schedule the appropriate Services to be repeated within thirty (30) days or shall promptly refund to Secretary any charges paid for the appropriate Services.

**12.05** Contractor affirmatively represents and warrants to the Secretary that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Contractor agrees that if this representation and warranty is deemed to be false, the Contract shall be void *ab initio* as between the parties to this Contract, and any funds paid by Secretary hereunder shall be immediately repaid to Secretary, or an action for recovery may be immediately commenced by Secretary for recovery of said funds.

### **Article XIII. SUSPENSION AND TERMINATION PROVISIONS**

**13.01** The Secretary may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceedings) has been filed by or against the Contractor. The Secretary may also terminate this Contract in the event that the Contractor violates any law or regulation in doing the Services, or if it appears to the Secretary that the Contractor's performance is substantially endangered through no fault of the Secretary. In any such case, the termination will be for cause, and the Secretary's rights and remedies will be those identified below for termination for cause.

**13.02** On written notice, the Contractor will have thirty (30) days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within thirty (30) days after written or electronic notice or if the breach is not one that is curable, the Secretary will have the right to terminate this Contract. The Secretary may also terminate this Contract in the case of breaches that are cured within thirty (30) days but are persistent. "Persistent" in this context means that the Secretary has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three (3) times. After the third notice, the Secretary may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than thirty

(30) days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

- 13.03** The Secretary may also terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Services. If a third party is providing funding for the Services, the Secretary may also terminate this Contract should that third party fail to release any Services funds.
- 13.04** The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor will immediately cease all work on the Services and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor will also immediately prepare a report and deliver it to the Secretary. The report must detail the work completed at the date of termination, the percentage of the Services' completion, any costs incurred in doing the Services to that date, and any Deliverables completed or partially completed but not delivered to the Secretary at the time of termination. The Contractor will also deliver all the completed and partially completed Deliverables to the Secretary with its report. But, if delivery in that manner would not be in the Secretary's interest, then the Contractor will propose a suitable alternative form of delivery.
- 13.05** If the Secretary terminates this Contract for cause, it will be entitled to cover for the Services by using another Contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to the Secretary for all costs related to covering for the Services to the extent that such costs, when combined with payments already made to the Contractor for the Services before termination, exceed the costs that the Secretary would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.
- 13.06** If the termination is for the convenience of the Secretary, the Contractor will be entitled to compensation for any work on the Services that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the Secretary to be owing to the Contractor. The Secretary will make that determination based on the lesser of the percentage of the Services completed or the hours of work performed in relation to the estimated total hours required to perform the entire Services.
- 13.07** The Secretary will have the option of suspending rather than terminating the Services where the Secretary believes that doing so would better serve its interests. In the event of a suspension for the convenience of the Secretary, the

Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Services rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the Secretary reinstates the Services after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the Secretary resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the Secretary from the default or other event giving rise to the suspension.

- 13.08** In the case of a suspension for the Secretary's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the Secretary's convenience. The Contractor will not be entitled to compensation for any costs associated with a suspension for the Secretary's convenience, but the Contractor will immediately notify the Secretary of any such costs and cooperate with the Secretary in minimizing or eliminating them. No payment under this provision will be made to the Contractor until the Contractor submits a proper invoice.
- 13.09** Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. And the Contractor will prepare a report concerning the Services just as is required by this section in the case of termination. After suspension of the Services, the Contractor will perform no work without the consent of the Secretary and will resume work only upon receipt of a written or electronic notice from the Secretary to do so. In any case of suspension, the Secretary retains its right to terminate this Contract rather than to continue the suspension or resume the Services. If the suspension is for the convenience of the Secretary, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.
- 13.10** The Secretary will not suspend the Services for its convenience more than once during the term of this Contract, and any suspension for the Secretary's convenience will not continue for more than thirty (30) calendar days. If the Contractor does not receive notice to resume or terminate the Services within the thirty (30) day period, then this Contract will terminate automatically for the Secretary's convenience at the end of the thirty (30) calendar day period.
- 13.11** Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Secretary for any liability to them. Each subcontractor will hold the Secretary harmless for any damage caused to them from a suspension or termination. They will look solely to the

Contractor for any compensation to which they may be entitled.

#### **Article XIV. INDEMNITY AND INSURANCE**

**14.01** Contractor shall indemnify, defend and hold Secretary, its officers, directors and employees harmless from and against any and all liabilities, obligations, losses, claims, damages, costs, charges or other expenses of any kind (including, but not limited to, reasonable attorneys' fees and legal costs) (collectively, "Claims") which arise out of or result from any breach or alleged breach of any representation or warranty made by Contractor hereunder or any Claim that any of the Services or any portion thereof violates any copyright, patent, trademark, trade secret, license, or other proprietary right of any third party. Contractor shall reimburse the State for any judgments for infringement of patent or copyright rights. Contractor shall also indemnify, defend and hold Secretary, its officers, directors and employees harmless from and against any and all Claims for personal injury or damage to property arising out of the furnishing, performance or use of the Services provided hereunder as well as any Claim for payment of compensation or salary asserted by an employee of Contractor. Secretary shall provide Contractor with written notice of any Claim which Secretary believes falls within the scope of this Article XIV. Secretary expressly reserves the sole right, at Secretary's option, to control the defense of any such Claim and, in such event, in addition to Contractor's other obligations in this Article XIV, Contractor agrees to provide reasonable assistance to Secretary, at Contractor's expense, in the defense of any such Claim. Contractor shall not settle any Claim without the prior written consent of Secretary.

**14.02** Contractor shall procure and maintain for itself and its employees all insurance coverages as required by federal or state law, including workers' compensation insurance. Contractor also agrees to maintain One Million Dollars (\$1,000,000.00) combined single limit general liability insurance. Contractor shall furnish to Secretary a certificate of insurance evidencing such coverage and naming Secretary as additional insured. Said certificate shall include a provision whereby notice must be received by Secretary thirty (30) days prior to coverage cancellation by either Contractor or Insurer.

#### **Article XV. COMPLIANCE WITH LAW**

**15.01** The Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. Contractor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions and any and all other taxes or payroll deductions required for all employees engaged by Contractor in the performance of the work authorized by this Agreement. The Secretary shall not be liable for any taxes under this Agreement.

#### **Article XVI. LIMITATION OF LIABILITY**

**16.01** IN NO EVENT SHALL SECRETARY BE LIABLE, IN LAW OR EQUITY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF SECRETARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SECRETARY'S AGGREGATE LIABILITY TO CONTRACTOR FOR ANY AND ALL MATTERS RELATED TO THIS AGREEMENT OR OTHERWISE EXCEED THE TOTAL OF PAYMENTS DUE AND OWING TO CONTRACTOR BY SECRETARY HEREUNDER. THE LIMITATIONS IN THIS ARTICLE APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF AGREEMENT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

## **Article XVII.                   CHANGES OR MODIFICATIONS**

**17.01** Any changes or modifications to this contract shall be made and agreed to by both parties, in writing, and in advanced. No amendment or modification to this Contract shall be valid unless and until accepted and signed by the Assistant Secretary of State, Monty Lobb, or the Secretary of State, J. Kenneth Blackwell. No other person has authority, express or implied, to accept any amendment or modification.

## **Article XVIII.               GOVERNING LAW; VENUE AND JURISDICTION**

**18.01** This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio, without reference to the choice of law provisions thereof.

The parties hereto hereby consent to the exclusive jurisdiction and venue of the Ohio Court of Claims for any action that may be brought in connection with this Agreement other than a cross-claim for indemnification brought in response to a claim of infringement filed in another court. In the case of a cross-claim for indemnification, Contractor agrees to be subject to the jurisdiction and venue of the court in which the infringement claim is brought, provided that Secretary is also subject to jurisdiction and venue in that court.

## **Article XIX.               RELATIONSHIP OF PARTIES**

**19.01** The relationship between Contractor and Secretary under this Agreement shall be that of independent contractors. Nothing in this Agreement shall be construed to create the relationship of employer and employee, a joint venture, a partnership, or association between Contractor and Secretary.

**Article XX.****REPRESENTATIONS OF THE PARTIES**

**20.01** Each party to this Agreement represents to the other party that it has full power and authority to enter into this Agreement and the execution, delivery and performance of this Agreement do not violate the terms of any other Agreement to which it is a party; or any law or regulation to which it is subject.

**Article XXI.****CERTIFICATION OF COMPLIANCE WITH OHIO ETHICS AND ELECTION LAW REQUIREMENTS FOR NONCOMPETITIVE BID CONTRACTS**

**21.01** Contractor by signature on this Agreement certifies that Contractor is currently in compliance and will continue to adhere to the requirements of Ohio Ethics Laws as provided by Sections 102.03 and 102.04 of the Ohio Revised Code.

**21.02** Contractor by signature on this Agreement certifies that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party, has made as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Secretary of State of Ohio or to his campaign committees.

**Article XXII.****MISCELLANEOUS**

**22.01** The rights and responsibility arising under this agreement may not be assigned or delegated by either party hereto in whole or in part, without the prior written approval of the other party hereto.

**22.02** Contractor affirmatively represents and warrants to the Secretary that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Contractor agrees that if this representation and warranty is deemed to be false, the Contract shall be void *ab initio* as between the parties to this Contract, and any funds paid by Secretary hereunder shall be immediately repaid to Secretary, or an action for recovery may be immediately commenced by Secretary for recovery of said funds.

**22.03** The Contractor may subcontract the work required to be performed under this Contract with the prior written approval by the Secretary.

**22.04** If any provision of this agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any other provision of this agreement.

**22.05** The parties agree that this agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, including any employee, vendor, or customer of either party, and that there are no third party

beneficiaries as to this agreement or any part or specific provision of this agreement.

- 22.06** This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 22.07** Right to Hire. Unless specified otherwise in an addendum to or work agreement under this agreement, Contractor agrees that Secretary may discuss employment opportunities with Contractor Employees. Secretary shall have the right to hire said Employees without any compensation to Contractor. Secretary may hire the employee through any manner they deem appropriate including but not limited to hiring as a direct employee, contracting directly with the individual, contracting for the individual through another consulting firm, and the like. In the event Employees of Contractor accepts such an employment arrangement with Secretary, Contractor will release the employee to Secretary within ten (10) business days. This includes waiving all rights under any non-compete, non-solicitation, or other contract clauses Contractor has with said Employees that may conflict with this right to hire.
- 22.08** No waiver of any breach or of any of the terms or provisions of this agreement shall be, or be construed to be, a waiver of any preceding or succeeding breach of the same or any other provision hereof.
- 22.09** The Contractor shall also deliver, assign, transfer and convey to the State all rights, title and interest to all documents, data, materials, information and other materials and property prepared or developed or created under or in connection with this Contract as described in Article II and Article III of this Agreement.
- 22.10** Any notices required or permitted by this agreement shall be sent by courier facsimile, or by registered or certified mail with return receipt requested. Notices shall be deemed given upon personal delivery to the addressee, or three days after the date of mailing if sent by registered or certified mail.

Notices to Secretary shall be sent to:

The Office of the Ohio Secretary of State  
General Counsel  
180 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

Facsimile: (614) 466-5409

Notices to GovTech Solutions, L.L.C. shall be sent to:

GovTech Solutions, L.L.C.  
Attn: Mike Connell

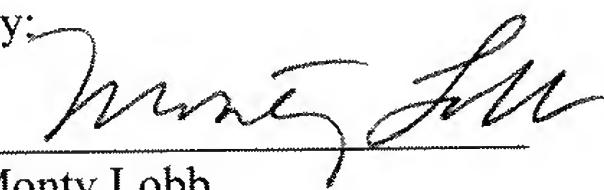
Summit of Richfield II  
3046 Brecksville Road  
Richfield, Ohio 44286

Facsimile: (330) 659-7388

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates appearing below.

Secretary:

By:

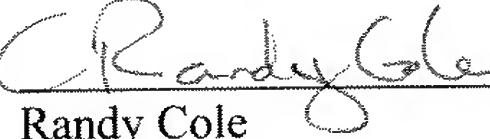
  
Monty Lobb

Title: Assistant Secretary of State

Date: 7/21/05

GovTech Solutions, LLC:

By:

  
Randy Cole

Title: President

Date: 07/18/05

34-1921588

FEDERAL TAX I.D. NUMBER